

## Internal Revenue Service

Number: **200802009**

Release Date: 1/11/2008

Index Number: 355.01-00, 368.08-08

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-121751-07

Date:

October 05, 2007

### LEGEND:

Distributing 1 =

Distributing 2 =

Distributing 3 =

Controlled =

LLC =

Merger Partner =

Trust =

Merger Agreement =

Business A =

Business B =

Business C =

State A =

State B =

State C =

State D =

State E =

a =

b =

c =

d =

e =

f =

g =

h =

Date 1 =

Date 2 =

Dear :

This letter responds to your May 7, 2007 request for rulings as to the federal income tax consequences of a series of proposed transactions. The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the First Distribution, Second Distribution and External Distribution (each as defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of earnings and profits of Distributing 3, Distributing 2, Distributing 1 or Controlled or any combination thereof (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing 3, Distributing 2, Distributing 1, or Controlled (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing 3 is a publicly traded holding company and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing 3 has a single class of voting common stock outstanding ("Distributing 3 Common Stock"). Distributing 3, through its subsidiaries, engages in Business A and Business B. Distributing 3 has outstanding indebtedness including notes, short-term commercial paper, and bonds (the "Distributing 3 Debt").

Distributing 3 directly owns all of the outstanding stock of Distributing 2 and Controlled. Distributing 2 directly owns all of the outstanding stock of Distributing 1. Distributing 1 engages in Business A in State A, State B, State C, State D and State E. Distributing 1 directly owns all of the outstanding membership interests of LLC (a newly-formed entity that is disregarded for federal income tax purposes). Distributing 1 will contribute to LLC its Business A assets and liabilities used in State A, State C, and State E (the "Controlled Business"). Distributing 1 has outstanding indebtedness including notes and bonds (the "Distributing 1 Debt"). Some of the Distributing 1 Debt is intercompany debt owed to other members of Distributing 3's affiliated group and/or one or more disregarded entities wholly owned by Distributing 3 (collectively, the "Finance Subsidiaries").

In connection with the Proposed Transaction, Distributing 3 formed Controlled, which has a single class of voting common stock (the “Controlled Common Stock”).

Financial information has been submitted which indicates that Business A has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 3's management believes that the separation of the Controlled Business from Distributing 3's other business segments will serve a number of corporate business purposes, including (1) to enhance each of Distributing 3's and Controlled's competitive positioning by allowing each to focus on its respective core business, and (2) to facilitate a proposed merger of Controlled with Merger Partner, a publicly-traded company engaged in Business C. Merger Partner is interested in acquiring the Controlled Business and certain other assets related thereto. Merger Partner has a single class of common stock (the “Merger Partner Common Stock”). On Date 1, Distributing 3, Controlled and Merger Partner entered into the Merger Agreement, agreeing to undertake certain transactions described in further detail below.

### **Proposed Transaction**

For what are represented to be valid business reasons, the following steps have been proposed (collectively, the “Proposed Transaction”):

- (i) Distributing 3 will contribute all of the Controlled Common Stock to Distributing 2 which will, in turn, contribute the Controlled Common Stock to Distributing 1.
- (ii) Controlled will borrow approximately \$a in cash from unrelated financial institutions (the “Bank Debt”). The proceeds from the Bank Debt will be used to pay the Special Distribution (as defined below).
- (iii) Distributing 1 will contribute all of the LLC membership interests to Controlled in exchange for additional shares of Controlled Common Stock, a cash distribution (the “Special Distribution”), and debt securities to be issued by Controlled with a face amount of approximately \$b and a term of years not less than c (the “Controlled Securities”) (the “First Contribution”). Distributing 1 will deposit the cash proceeds of the Special Distribution in a segregated account and will not distribute such proceeds or dispose of the Controlled Securities until after the External Distribution and Merger are complete. LLC may further contribute some or all of its assets and related liabilities to newly-formed wholly owned subsidiary corporations or limited liability companies.

(iv) Distributing 1 will distribute all of the Controlled Common Stock to Distributing 2 (the “First Distribution”).

(v) Distributing 2 will distribute all of the Controlled Common Stock to Distributing 3 (the “Second Distribution”).

(vi) Distributing 3 will contribute to Controlled certain additional assets and liabilities relating to the Controlled Business (the “Second Contribution”). Immediately after the Second Contribution, Controlled will contribute the assets and related liabilities it received in the Second Contribution to a newly formed corporate subsidiary (“Sub 1”). Sub 1 may further contribute some or all of these assets and related liabilities to newly-formed subsidiary corporations or limited liability companies.

(vii) Distributing 3 will distribute all of the Controlled Common Stock pro rata to the holders of Distributing 3 Common Stock (the “External Distribution”). Distributing 3 will effect the External Distribution by delivering to an exchange agent on behalf of the Distributing 3 shareholders all of the outstanding shares of Controlled Common Stock, which the agent will hold on behalf of the Distributing 3 shareholders for conversion into shares of Merger Partner Common Stock pursuant to the Merger described in step (xi) below.

(viii) After the External Distribution, Distributing 1 will either distribute the Special Distribution to Distributing 2 or use the Special Distribution to repay Distributing 1 Debt owed to unrelated third parties, in either case as soon as practicable after the External Distribution and Merger are complete, and in any event no later than d days following the First Distribution. Distributing 2 intends to distribute any proceeds from the Special Distribution to Distributing 3, and Distributing 3 will use all such proceeds as follows: (a) to make distributions to its shareholders, (b) to repurchase outstanding Distributing 3 Common Stock, and/or (c) to repay Distributing 3 Debt owed to unrelated third parties, in each case within d days following the First Distribution and pursuant to the plan of reorganization.

(ix) After the External Distribution, Distributing 1 will distribute all of the Controlled Securities received by it in the First Contribution either (a) to the Finance Subsidiaries in exchange for intercompany debt obligations of Distributing 1, (the “Internal Debt Exchange”) and/or (b) to Distributing 2. Distributing 2 would then immediately distribute any Controlled Securities it receives to Distributing 3 (each such distribution, an “Internal Distribution”). Distributing 1 intends to complete such distributions as quickly as practicable after the External Distribution and Merger are complete, and in any event no later than d days following the First Distribution. The Finance Subsidiaries intend to transfer the Controlled Securities received in the Internal Debt Exchange, if any, to Distributing 3 (or a disregarded entity wholly owned by Distributing 3) in exchange for cash and/or debt owed by the Finance Subsidiaries to Distributing 3 (or such entity) as quickly as practicable or the Finance Subsidiaries may

transfer the Controlled Securities to other Finance Subsidiaries in exchange for cash and/or as repayment of debt, and such other Finance Subsidiaries would in turn transfer the Controlled Securities to Distributing 3 (or a disregarded entity wholly owned by Distributing 3) in exchange for cash and/or as repayment of debt. Distributing 3 (after receiving the Controlled Securities (1) from Distributing 2, to the extent the Internal Distributions occur, and/or (2) from the Finance Subsidiaries, to the extent the Internal Debt Exchange occurs) will then dispose of the Controlled Securities in the External Debt Exchange (as defined below) as quickly as practicable.

(x) Distributing 3 will transfer all of the Controlled Securities received by it to an investment bank or a commercial bank or a group of investment banks or commercial banks (the "Investment Banks") in exchange for Distributing 3 Debt outstanding at the time of the External Distribution, which is expected to consist of commercial paper acquired by the Investment Banks as principals for their own account (either in a direct issuance by Distributing 3 to the Investment Banks for cash or by purchases in the secondary market) at least 14 days prior to the External Distribution (the "External Debt Exchange"). Distributing 3 expects to consummate the External Debt Exchange in accordance with an exchange agreement entered into by it and the Investment Banks no sooner than 5 days after the Investment Banks acquire the Distributing 3 Debt, pursuant to which the parties will agree to exchange an amount of Distributing 3 Debt to be determined by the parties bargaining at arm's-length for the Controlled Securities received by Distributing 3. Following the External Debt Exchange, Distributing 3 anticipates that the Investment Banks will sell the Controlled Securities they receive in the External Debt Exchange to unrelated third parties.

(xi) Immediately following the External Distribution, Controlled will merge with and into Merger Partner in a transaction qualifying as a statutory merger under applicable state law, with Merger Partner surviving (the "Merger"). Except for cash received in lieu of fractional shares, if any, the shareholders of Controlled will receive solely Merger Partner Common Stock in exchange for their Controlled Common Stock. Any fractional shares of Merger Partner Common Stock will be aggregated by the exchange agent and sold in the open market at then prevailing prices. The proceeds from such sales will then be delivered to the Controlled shareholders who would otherwise have received the fractional shares. After the Merger, the former Controlled shareholders will own approximately e% of the outstanding Merger Partner Common Stock, and will own more than 50% of the total combined voting power of all classes of stock of Merger Partner entitled to vote and more than 50% of the total value of shares of all classes of stock of Merger Partner.

(xii) As a result of the Merger, Merger Partner will become the obligor with respect to all outstanding debt of Controlled, including the Bank Debt and the Controlled Securities.

In connection with the Proposed Transaction, Distributing 3, Controlled, and Merger Partner have entered, and will enter, into several agreements relating to the separation of the Controlled Business from Distributing 3, Distributing 2 and Distributing 1 and certain continuing transactions between the companies, including certain transitional agreements and a tax sharing agreement.

### **Representations**

Distributing 3 makes the following representations with respect to the First Contribution and First Distribution:

- (a) Other than the Controlled Securities, indebtedness, if any, owed by Controlled to Distributing 1 after the First Distribution will not constitute stock or securities.
- (b) No part of the consideration to be distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (c) No part of the consideration to be distributed by Distributing 1 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 1.
- (d) The five years of financial information submitted on behalf of Business A conducted by the Distributing 1 separate affiliated group ("SAG") is representative of the Distributing 1 SAG's present operations, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (e) Following the First Distribution, the Distributing 1 SAG and the Controlled SAG will each continue the active conduct of their respective businesses, independently and with their separate employees.
- (f) The First Distribution is being carried out for the corporate business purpose of making possible the External Distribution and is motivated, in whole or substantial part, by this corporate business purpose.
- (g) The First Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled or both.
- (h) The fair market value of the assets transferred to Controlled by Distributing 1 in the First Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 1 that are

discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 1 from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(i) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing 1 in the First Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) transferred by Controlled to Distributing 1 that is to be distributed to the shareholders of Distributing 1 or transferred to creditors of Distributing 1 pursuant to the plan of reorganization.

(j) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the First Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(k) The Controlled Securities issued to Distributing 1 in the First Contribution will qualify as “securities” within the meaning of § 361(a).

(l) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to §§ 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(m) No indebtedness between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the First Distribution other than the settlement of open intercompany account balances attributable to normal business operations of Distributing 1 and its subsidiaries prior to the First Distribution.

(n) No intercorporate debt will exist between Distributing 1 and Controlled at the time of, or subsequent to, the First Distribution, except for the Controlled Securities and payables arising under transitional agreements or otherwise in the ordinary course of business.

(o) Immediately before the First Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 1's excess loss account, if any,



with respect to its Controlled Common Stock will be included in income immediately before the First Distribution to the extent required by regulations (see § 1.1502-19).

(p) Except for certain payments that will be made in connection with the tax sharing agreement and certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing 1 (and its subsidiaries) and Controlled (and its subsidiaries) following the First Distribution, will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.

(q) No two parties to the First Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(s) For purposes of § 355(d), immediately after the First Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution, or (ii) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the First Distribution.

(t) The First Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled (including any predecessor or successor of any such corporation).

(u) The sum of the Distributing 1 Debt (i) exchanged for Controlled Securities in the Internal Debt Exchange and (ii) repaid with the proceeds of the Special Distribution will not exceed the weighted quarterly average of the Distributing 1 Debt for the 12 month period ending on the close of business on Date 2, the last full business day before the date on which Distributing 3's Board of Directors initially discussed the potential disposition of the Controlled Business.

(v) Pursuant to the plan of reorganization, Distributing 1 will distribute the Special Distribution proceeds to Distributing 2 and/or use such proceeds to repay Distributing 1 Debt held by unrelated third parties. The Special Distribution proceeds will be held in a segregated account until they are used as described above.

Distributing 3 makes the following representations with respect to the Second Distribution:

(w) Other than the Controlled Securities that may be temporarily held by Distributing 2 pursuant to the Internal Distributions, indebtedness, if any, owed by Controlled to Distributing 2 after the Second Distribution will not constitute stock or securities.

(x) No part of the consideration to be distributed by Distributing 2 will be received by Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(y) The five years of financial information submitted on behalf of Business A conducted by the Distributing 2 (SAG)(through Distributing 1) is representative of the present operations of the Distributing 2 SAG, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(z) The five years of financial information submitted on behalf of Business A conducted by the Controlled SAG is representative of the present operations of the Controlled Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(aa) Following the Second Distribution, the Distributing 2 SAG and the Controlled SAG will each continue the active conduct of their respective businesses, independently and with their separate employees.

(bb) The Second Distribution is being carried out for the corporate business purpose of making possible the External Distribution and is motivated, in whole or substantial part, by this corporate business purpose.

(cc) The Second Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled or both.

(dd) Distributing 2 will transfer the Special Distribution proceeds distributed to it by Distributing 1 (if any) to Distributing 3 pursuant to the plan of reorganization. Such proceeds will be held in a segregated account until they are used as described above.

(ee) No indebtedness between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the Second Distribution other than the settlement of open intercompany account balances attributable to normal business operations of Distributing 2 and its subsidiaries prior to the Second Distribution.

(ff) No intercorporate debt will exist between Distributing 2 and Controlled at the time of, or subsequent to, the Second Distribution, except for the Controlled Securities and payables arising under transitional agreements or otherwise in the ordinary course of business.

(gg) Immediately before the Second Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 2's excess loss account, if any, with respect to its Controlled Common Stock will be included in income immediately before the Second Distribution to the extent required by applicable regulations (see § 1.1502-19).

(hh) Except for certain payments that will be made in connection with the tax sharing agreement and certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing 2 (and its subsidiaries) and Controlled (and its subsidiaries) following the Second Distribution, will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.

(ii) No two parties to the Second Distribution are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

(jj) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.

(kk) For purposes of § 355(d), immediately after the Second Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second

Distribution, or (ii) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Second Distribution.

(ll) The Second Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled (including any predecessor or successor of any such corporation).

Distributing 3 makes the following representations with respect to the Second Contribution, the External Distribution, and the External Debt Exchange:

(mm) The Trust, which was established for the primary purpose of providing special awards for heroic acts or other special meritorious service to the company or the community at large, holds approximately f shares of Distributing 3 Common Stock constituting less than g% of the outstanding Distributing 3 Common Stock. Distributing 3 will cause the Trust to dispose of the Merger Partner Common Stock received in the Merger in exchange for the Controlled Common Stock received in the External Distribution by the Trust (such stock received in the Merger, the “Retained Common Stock” and the receipt of such stock by the Trust, the “Retention”) as soon as practicable after the External Distribution, and in any event, not later than six months after the External Distribution.

(nn) The Retained Common Stock will be voted in proportion to the votes cast by other shareholders of Merger Partner.

(oo) The Trust has been properly treated as a grantor trust pursuant to § 671 at all times since its formation.

(pp) Other than the Controlled Securities to be held by Distributing 3 prior to the External Debt Exchange, indebtedness, if any, owed by Controlled to Distributing 3 after the External Distribution will not constitute stock or securities.

(qq) Except for the receipt of Controlled Common Stock by holders of restricted Distributing 3 Common Stock who have not made a valid election under § 83(b), no part of the consideration to be distributed by Distributing 3 with respect to the Distributing 3 Common Stock will be received by any shareholder of Distributing 3 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 3.

(rr) No part of the consideration to be distributed by Distributing 3 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 3.

(ss) The five years of financial information submitted on behalf of Business A conducted by the Distributing 3 SAG (through Distributing 1) is representative of the present operations of the Distributing 3 SAG, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(tt) The five years of financial information submitted on behalf of the Controlled SAG is representative of the present operations of the Controlled Business, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

(uu) Following the External Distribution, the Distributing 3 SAG and the Controlled SAG will each continue the active conduct of their respective businesses, independently and with their separate employees.

(vv) The External Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (i) to enhance each of Distributing 3's and Controlled's competitive positioning by allowing each to focus on its respective core business; (ii) to optimize the capital structure of Controlled and increase the financial flexibility of Distributing 3; (iii) to facilitate the Merger; and (iv) to enhance the efficiency and effectiveness of Controlled's equity-linked compensation.

(ww) The External Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing 3 or Controlled or both.

(xx) The fair market value of the assets transferred to Controlled by Distributing 3 in the Second Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in connection with the exchange, (ii) the amount of any liabilities owed to Controlled by Distributing 3 that are discharged or extinguished in connection with the exchange, and (iii) the amount of the cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without recognition of gain) received by Distributing 3 from Controlled in connection with the exchange. The fair market value of the assets of Controlled will exceed the amount of its liabilities immediately after the exchange.

(yy) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing 3 in the Second Contribution each will equal or exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled in the exchange and (ii) the total of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 3 and transferred to its creditors and/or shareholders in connection with the reorganization.

(zz) Any liabilities assumed (within the meaning of § 357(d)) by Controlled in the Second Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.

(aaa) Pursuant to the plan of reorganization, Distributing 3 will use the Special Distribution proceeds (if any) distributed to it by Distributing 2 to repay Distributing 3 Debt held by unrelated third parties and/or to repurchase shares of Distributing 3 Common Stock and/or to make a distribution to Distributing 3's shareholders. Such proceeds will be held in a segregated account until they are used as described above.

(bbb) The sum of the Distributing 3 Debt (i) exchanged for Controlled Securities in the External Debt Exchange and (ii) repaid with the proceeds of the Special Distribution will not exceed the weighted quarterly average of the Distributing 3 Debt for the 12 month period ending on the close of business on Date 2, the last full business day before the date on which Distributing 3's Board of Directors initially discussed the potential disposition of the Controlled Business.

(ccc) The income tax liability for the taxable year in which investment credit property (including any building to which § 47(d) applies) is transferred will be adjusted pursuant to § 50(a)(1) or (a)(2) (or § 47, as in effect before amendment by Public Law 101-508, Title 11, 104 Stat. 1388, 536 (1990), if applicable) to reflect an early disposition of property.

(ddd) No indebtedness between Distributing 3 (and its subsidiaries) and Controlled (and its subsidiaries) has been or will be cancelled in connection with the External Distribution other than the settlement of open intercompany account balances attributable to normal business operations of Distributing 3 and its subsidiaries prior to the External Distribution.

(eee) No intercorporate debt will exist between Distributing 3 and Controlled at the time of, or subsequent to, the External Distribution, except for the Controlled Securities and payables arising under transitional agreements or otherwise in the ordinary course of business.

(fff) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-32 I.R.B. 6; § 1.1502-13 as published by T.D. 8597, and as currently in effect). Further, Distributing 3's excess loss account, if any, with respect to its Controlled Common Stock will be included in income immediately before the External Distribution to the extent required by applicable regulations (see § 1.1502-19).

(ggg) Except for certain payments that will be made in connection with the tax sharing agreement and certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing 3 (and its subsidiaries) and Controlled (and its subsidiaries) following the External Distribution, will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.

(hhh) No two parties to the External Distribution are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

(iii) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Distributing 3 stock entitled to vote, or 50% or more of the total value of shares of all classes of Distributing 3 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(jjj) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50% or more of the total combined voting power of all classes of Controlled stock entitled to vote, or 50% or more of the total value of shares of all classes of Controlled stock, that was either (i) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution, or (ii) attributable to distributions on Distributing 3 stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.

(kkk) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of § 355(d)(4)) in Distributing 3 or Controlled (including any predecessor or successor of any such corporation).

(lll) Immediately after the External Distribution, neither Distributing 3 nor Controlled will be a "disqualified investment corporation" as defined in § 355(g)(2)(A).

Distributing 3 makes the following representations with respect to the Merger:

(mmm) Other than the Controlled Securities and the Bank Debt, the liabilities of Controlled assumed (within the meaning of § 357(d)) by Merger Partner will have been incurred in the ordinary course of business and will be associated with the assets being transferred.

(nnn) Controlled will not be an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).

(ooo) Controlled will not be under the jurisdiction of a court in a title 11 or similar case under § 368(a)(3)(A).

Distributing 3 and Merger Partner make the following representations with respect to the Merger:

(ppp) The fair market value of the Merger Partner Common Stock and cash in lieu of fractional shares, if any, received by each Controlled shareholder will be approximately equal to the fair market value of the Controlled Common Stock surrendered in the exchange thereof.

(qqq) At least 40% of the proprietary interest in Controlled will be exchanged for Merger Partner Common Stock and will be preserved within the meaning of § 1.368-1(e).

(rrr) Neither Merger Partner nor any person related to Merger Partner (within the meaning of § 1.368-1(e)(3)) has any plan or intention, directly or through any subsidiary corporation, to purchase any Merger Partner Common Stock after the Merger, other than through stock purchases meeting the requirements of section 4.05(1)(b) of Rev. Proc. 96-30 1996-1 C.B. 696 (see Rev. Rul. 99-58, 1999-2 C.B. 701).

(sss) Merger Partner has no plan or intention to sell or otherwise dispose of any of the assets of Controlled acquired in the Merger, except for dispositions made in the ordinary course of business or transfers described in § 368(a)(2)(C).

(ttt) Following the Merger, Merger Partner (through its controlled subsidiaries) will continue the active conduct of the Controlled Business.

(uuu) Except for certain customary provisions of the Merger Agreement allocating transfer expenses and certain other transaction costs, Merger Partner, Controlled, and the Controlled shareholders will pay their respective expenses, if any, incurred in connection with the Merger.

(vvv) There is no intercorporate indebtedness existing between Controlled and Merger Partner that was issued, acquired, or will be settled at a discount.

(www) Merger Partner is not an investment company as defined in §§ 368(a)(2)(F)(iii) and (iv).

(xxx) The fair market value of the Controlled assets to be transferred to Merger Partner will equal or exceed the sum of the liabilities assumed (within the meaning of § 357(d)) by Merger Partner.



(yyy) The Merger will qualify as a statutory merger under applicable state law.

(zzz) The payment of cash in lieu of fractional shares, if any, of Merger Partner Common Stock will be solely for the purpose of avoiding the expense and inconvenience to Merger Partner of issuing fractional shares and will not represent separately bargained-for consideration. It is expected that the total cash consideration that will be paid by the distribution agent to the shareholders of record of Controlled pursuant to the Merger Agreement instead of issuing fractional shares will not exceed h% of the total consideration that will be issued in the transaction to the Controlled shareholders in exchange for their shares of Controlled Common Stock. It is intended that no Controlled shareholder of record will receive cash in an amount equal to or greater than the value of one full share of Merger Partner Common Stock.

### **Rulings**

Based on the information submitted and the representations made, we rule as follows on the First Contribution and the First Distribution:

- (1) The First Contribution, followed by the First Distribution, will be a reorganization within the meaning of § 368(a)(1)(D). Distributing 1 and Controlled will each be “a party to a reorganization” within the meaning of § 368(b).
- (2) Distributing 1 will not recognize any gain or loss on the First Contribution (§§ 357(a) and 361(a), (b)).
- (3) Controlled will not recognize any gain or loss on the First Contribution (§ 1032(a)).
- (4) Controlled’s basis in each asset received in the First Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the transfer (§ 362(b)).
- (5) Controlled’s holding period in each asset received in the First Contribution will include the period during which Distributing 1 held that asset (§ 1223(2)).
- (6) Distributing 1 will not recognize any gain or loss on the First Distribution (§ 361(c)).
- (7) Distributing 2 will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled Common Stock in the First Distribution (§ 355(a)).
- (8) Distributing 2’s holding period in the Controlled Common Stock received will include Distributing 2’s holding period for the Distributing 1 Common Stock, provided

that the Distributing 1 Common Stock is held as a capital asset on the date of the Second Distribution (§ 1223(1)).

(9) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled in accordance with § 312(h), § 1.312-10(a) and § 1.1502-33.

(10) Provided that the Controlled Securities are transferred in an External Debt Exchange in connection with the Proposed Transaction as described above, then under the intercompany transaction regulations, Distributing 3, Distributing 1 and other members of Distributing 3's affiliated group will not recognize any income, gain, loss, or deduction with respect to the Controlled Securities on the transfer of the Controlled Securities, other than any (i) amount of income, gain, loss, or deduction that offsets Controlled's corresponding amount of income, gain, loss or deduction upon the deemed satisfaction of the Controlled Securities, (ii) deductions attributable to the fact that Distributing 1 Debt or Distributing 3 Debt may be redeemed at a premium, (iii) income attributable to the fact that Distributing 1 Debt or Distributing 3 Debt may be redeemed at a discount, (iv) interest expense accrued with respect to Distributing 1 Debt or Distributing 3 Debt, and (v) income, gain, deductions or loss realized on the transfer of the Controlled Securities in the Internal Debt Exchange and the External Debt Exchange attributable to appreciation or depreciation in the Controlled Securities after the time they are acquired and prior to their disposition by Distributing 1 or Distributing 3 as the case may be.

(11) If the Internal Debt Exchange occurs, the Finance Subsidiaries will obtain a cost basis, determined at the time of the Internal Debt Exchange, in the Controlled Securities. If the Internal Distributions occur, Distributing 2 will obtain a basis determined under § 301(d) in any Controlled Securities distributed to it by Distributing 1 in the first Internal Distribution, determined at the time of such Internal Distribution. Distributing 3 will obtain (i) a basis determined under § 301(d) in any Controlled Securities distributed to it by Distributing 2 in the second Internal Distribution, (ii) a cost basis in any Controlled Securities acquired by Distributing 3 (directly or through a disregarded entity) from the Finance Subsidiaries in exchange for cash or debt owed by the Finance Subsidiaries, and (iii) to the extent a Finance Subsidiary participating in the Internal Debt Exchange is a disregarded entity wholly owned by Distributing 3, a cost basis in any Controlled Securities deemed acquired by Distributing 3 through such entity in the Internal Debt Exchange, in each case determined at the time of the transaction in which Distributing 3 acquires (directly or through a disregarded entity) the Controlled Securities.

Based on the information submitted and the representations made, we rule as follows on the Second Distribution:

(12) Distributing 2 will not recognize any gain or loss on the Second Distribution (§ 355(c)).

(13) Distributing 3 will not recognize any gain or loss (and will not otherwise include any amount in income) on the receipt of the Controlled Common Stock in the Second Distribution (§ 355(a)(1)).

(14) Distributing 3's holding period in the Controlled Common Stock received will include Distributing 3's holding period for the Distributing 2 Common Stock, provided that the Distributing 2 Common Stock is held as a capital asset on the date of the Second Distribution (§ 1223(1)).

(15) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled in accordance with § 312(h), § 1.312-10(a) and § 1.1502-33(e)(3).

Based on the information submitted and the representations made, we rule as follows on the Second Contribution and the External Distribution:

(16) The Second Contribution, followed by the External Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing 3 and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(17) Distributing 3 will not recognize any gain or loss on the Second Contribution (§§ 357(a) and 361(a), (b)).

(18) Controlled will not recognize any gain or loss on the Second Contribution (§ 1032(a)).

(19) Controlled's basis in each asset received in the Second Contribution will equal the basis of that asset in the hands of Distributing 3 immediately before the transfer (§ 362(b)).

(20) Controlled's holding period in each asset received in the Second Contribution will include the period during which Distributing 3 held that asset (§ 1223(2)).

(21) Distributing 3 will not recognize any gain or loss on the External Distribution (§ 361(c)).

(22) The Distributing 3 shareholders will not recognize any gain or loss (and will not otherwise include any amount in income) upon the receipt of the Controlled Common Stock in the External Distribution, except for holders of restricted Distributing 3 Common Stock who have not made a valid election under § 83(b) (§ 355(a)).

(23) Each Distributing 3 shareholder's basis in a share of Distributing 3 Common Stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing 3 Common Stock with respect to which the External Distribution is made and the share

of Controlled Common Stock (or allocable portions thereof) received with respect to the share of Distributing 3 Common Stock in proportion to their fair market values. If one share of Controlled Common Stock is received in respect of more than one share of Distributing 3 Common Stock, the basis of each share of Distributing 3 Common Stock must be allocated to the shares of Controlled Common Stock received in a manner that reflects that, to the extent possible, a share of Controlled Common Stock is received in respect of shares of Distributing 3 Common Stock acquired on the same date and at the same price. If a Distributing 3 shareholder that purchased or acquired shares of Distributing 3 Common Stock on different dates or at different prices is not able to identify which particular share of Controlled Common Stock (or portion thereof) is received with respect to a particular share of Distributing 3 Common Stock, the shareholder may designate which particular share of Controlled Common Stock (or portion thereof) is received with respect to a particular share of Distributing 3 Common Stock, provided the designation is consistent with the terms of the External Distribution.

(24) Each Distributing 3 shareholder's holding period in the Controlled Common Stock received will include the holding period of the Distributing 3 Common Stock with respect to which the distribution of the Controlled Common Stock is made, provided that the Distributing 3 Common Stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).

(25) Earnings and profits, if any, will be allocated between Distributing 3 and Controlled in accordance with § 312(h), § 1.312-10(a) and § 1.1502-33(e)(3).

(26) The Retention is not in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax (§ 355(a)(1)(D)(ii)).

Based on the information submitted and the representations made, we rule as follows on the Merger:

(27) The Merger will qualify as a reorganization within the meaning of § 368(a)(1)(A) provided that the Merger qualifies as a statutory merger under applicable law. Controlled and Merger Partner will each be "a party to a reorganization" under § 368(b).

(28) Controlled will not recognize gain or loss on the transfer of its assets to Merger Partner and the assumption by Merger Partner of the liabilities of Controlled, including the Controlled Securities and the Bank Debt (§ 361(a)).

(29) Merger Partner will not recognize gain or loss on the receipt of Controlled assets in exchange for Merger Partner Common Stock (§ 1032(a)).

(30) Merger Partner's basis in each asset received in the Merger will equal the basis of that asset in the hands of Controlled immediately before the Merger (§ 362(b)).

(31) Merger Partner's holding period in each asset received in the Merger will include the period during which Controlled held that asset (§ 1223(2)).

(32) Merger Partner will succeed to and take into account those attributes of Controlled described in § 381(c) (§ 381(a) and § 1.381(a)-1)). These items will be taken into account by Merger Partner subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

(33) No gain or loss will be recognized by shareholders of Controlled on the receipt of Merger Partner Common Stock in exchange for Controlled Common Stock (§ 354(a)(1)).

(34) A Controlled shareholder who receives cash in lieu of a fractional share will recognize gain or loss measured by the difference between the basis allocated to the fractional share transferred, as determined below, and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided such fractional share will be held as a capital asset on the date of the Distribution (§§ 1221 and 1222).

(35) Each Controlled shareholder's basis in the Merger Partner Common Stock (including fractional shares thereof) received in the Merger will be the same as the basis of the share or shares (or allocable portions thereof) of Controlled Common Stock exchanged therefore, allocated in the manner described in § 1.358-2.

(36) Each Controlled shareholder's holding period in the Merger Partner Common Stock received in the Merger will include the holding period in the Controlled Common Stock exchanged therefore, provided the Controlled Common Stock is held as a capital asset on the date of the Merger (§ 1223).

(37) Payments made between Distributing 3 and Merger Partner that (i) have arisen or will arise for a taxable period ending on or before the date of the Merger or for a taxable period beginning before and ending after the date of the Merger and (ii) will not become fixed and ascertainable until after the Merger, will be treated as occurring between Distributing 3 and Controlled immediately before the External Distribution. (Rev. Rul. 83-73, 1983-1 C.B. 84; Arrowsmith v. Comm'r, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952)) (tax character of later transaction will derive from earlier, related transaction).

### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings.

In particular, no opinion is expressed regarding whether the First Distribution, Second Distribution and External Distribution: (i) satisfy the business purpose requirement of § 1.355-2(b), (ii) are being used principally as a device for the distribution of earnings and profits of Distributing 3, Distributing 2, Distributing 1 or Controlled or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing 3, Distributing 2, Distributing 1 or Controlled (see § 355(e) and § 1.355-7). Additionally, no opinion is expressed regarding any tax effects of the any pre-transaction restructuring.

### **Procedural Statements**

This ruling letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representatives.

Sincerely,

*Richard K. Passales*

Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)